Supreme Court, U.S.
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No.

In The

# Supreme Court of the United States

CHRISTOPHER T HARRIS,
*Petitioner,*

v.

CITY OF DORAVILLE, ET AL.,
*Respondents.*

On Petition For Writ Of Certiorari
To The United States Court of Appeals
for the Eleventh Circuit

## PETITION FOR WRIT OF CERTIORARI

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35 pp

## QUESTIONS PRESENTED FOR REVIEW

Petitioner contends he was falsely arrested by certain of respondents in 1996. The state of Georgia officially closed the criminal case against petitioner in 1998 due to "insufficient evidence". But rather than dismissing the charges, the state left the case pending, using a prosecutorial procedural device known in Georgia as "NPGJ" (Not Presented to Grand Jury). After the criminal case was closed, petitioner sued the respondents under 42 U.S.C. § 1983 for illegal search and seizure, false arrest and related torts. But the U.S. District Court refused to compel production of documents on grounds that all documents relating to the arrests of petitioner were protected from disclosure as part of an "ongoing criminal investigation". Then the court dismissed petitioner's civil action because petitioner lacked documentation to prove that he was falsely arrested! The Court of Appeals affirmed the dismissal, asserting that "the requested materials related to the pending felony charge of sexual exploitation of children and, therefore, constituted an ongoing criminal investigation." Yet after well over five (5) years since the false arrests and over three (3) years since the criminal case was closed, it remains closed. Thus the following questions are presented:

1. Is the Georgia prosecutorial procedural device "NPGJ" (Not Presented to Grand Jury) virtually equivalent to the former North Carolina procedural device of *nolle prosequi* with leave and thus unconstitutional in accordance with this court's decision in *Klopfer v. North Carolina*, 386 U.S. 213 (1967)?

2. Did the district court abuse in discretion in denying petitioner's motion to compel production of documents related to the arrest of petitioner under the premise that the refusal by the state to bring petitioner to trial or formally dismiss the criminal case against him constituted an "ongoing criminal investigation"?

3. Should the district court have granted petitioner's Motion for Immediate Stay for the resolution of the arrest warrant as equitable litigation to the civil action?

4. Was the district court justified in granting respondents' motion for summary judgment by dismissing the civil action even though petitioner had been denied sufficient opportunity for discovery?

5. Did the district court contradict the U.S. Constitution by ruling that police

officers were performing "discretionary functions" when they preformed searches, seizures and arrests of petitioner without warrants?
6. Was the district court justified in granting defendants' motion for summary judgment and dismissing the civil action under the premise that the arresting officers were entitled to qualified immunity because there was probable cause for the arrest of petitioner as a pure question of law?

Parties

City of Doraville, Georgia;

City of Doraville Police Department;

Chief of Police Ronald E. Davis, Sr.;

Major Clifford M. Edwards;

Lt. Robert J. Brown;

Det. Timothy L. Baggett;

Sgt. Henry M. Pritchett;

Officer Bethann M. Stock;

Unknown Doraville police officers, one of whom was later identified as officer B. J. Baker. Officer Baker assisted Detective Baggett with the false arrests of petitioner, the search and seizures of petitioner's property, the imprisonments of petitioner in the Doraville City jail, the transportation of petitioner to DeKalb Magistrate Court on May 9, 1996, and the transfer of petitioner to and imprisonment in the DeKalb County jail. The district court denied petitioner's motion to add officer B.J. Baker as a named defendant, giving as reason that the discovery of his identity had come too late in the proceedings.

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## PETITION FOR WRIT OF CERTIORARI

## OPINIONS BELOW

The opinions and judgment of the U.S. Court of Appeals for the Eleventh Circuit, case no. 00-13645, is unpublished. They are included at Supp. App. 35 through Supp. App 44. The opinions and judgments of the district court in this civil action are also unpublished. They are included at Supp. App. 1 through Supp. App. 34. Petitioner also includes in the regular appendix herein at App. 14 the April 29, 1998 decision of the Superior Court of DeKalb County denying the petitioner's motion to dismiss arrest warrant no. 96W01014 in the 1996 criminal case arising from the alleged false arrests. Petitioner appealed the denial of the motion to dismiss as a violation of his constitutional right to a speedy trial through the state court of Appeals and the Supreme Court of Georgia and eventually all the way to this court, *Harris v. Georgia*, 120 S. Ct. 177, docket no. 99-115 (1999), *cert. denied*. All appeals of the Superior Court's ruling denying petitioner's motion to dismiss were ostensibly denied as interlocutory without certification for appeal because DeKalb County Superior Court Senior Judge Edward D. Wheeler denied the petitioner's Motion for Certification of Ruling.

## STATEMENT OF JURISDICTION

The final judgment of the court of appeals was entered on April 6, 2001, case no. 00-13645. A petition for rehearing was denied on May 24, 2001. App. No. 00-13645-FF, ORD-41. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). This petition for certiorari is timely filed.

## CONSTITUTIONAL PROVISIONS AND FEDERAL AND STATE STATUTES

The appendix herein sets forth verbatim the following referenced constitutional provisions: Amendments of the U.S. Constitution: Fourth, Fifth, Sixth and Fourteenth. The appendix herein sets forth verbatim all or relevant parts of the following referenced statutory and regulatory provisions: Georgia statutes O.C.G.A. § 16-12-100, Sexual Exploitation of Children; O.C.G.A. § 17-7-170, Georgia Speedy Trial laws which apply for indicted criminal cases; and O.C.G.A. § 17-12-32 through O.C.G.A. § 17-12-33, the Georgia statutes implementing the Georgia Indigent Defense Council.

This civil action also relies upon or makes reference to federal statutes 18 USC § 3161 through 18 USC § 3162, which are codified sections of the Federal Speedy Trial Act of 1974; 28 U.S.C. § 1367, Supplemental Jurisdiction; 42 U.S.C. § 1983, Civil Action for Deprivation of Rights and 42 U.S.C. § 1985, Conspiracy to Interfere with Civil Rights. The text of the federal statutes will be set out in appendix to Brief if the petition is granted.

Petitioner Christopher T. Harris, *pro se*, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eleventh Circuit entered in this proceeding on April 6, 2001.

## STATEMENT OF THE CASE

### A. Statement of facts

Petitioner was arrested twice in May and June of 1996 by certain of respondent police officers employed by the city of Doraville, Georgia. Petitioner alleges both arrests were maliciously motivated as retaliation for his reporting and testifying in a court of law to criminal misconduct by respondent Doraville police officer Beth Stock and to hinder any suit that the petitioner might bring against the City of Doraville alleging negligent breach of legal duty which needlessly put petitioner at imminent risk of death and that actually resulted in gunshot injuries that respondent officer Stock could have and should have taken action to prevent as responding officer to the petitioner's 911 call to Doraville police for emergency assistance.

Petitioner reported the breach of legal duty as well as false reporting by respondent officer Beth Stock to her superiors and fellow officers but instead of taking actions to remedy petitioner's verbal and written complaints, other Doraville police officers instigated a criminal investigation against him in an attempt to incriminate, incarcerate and otherwise thwart the petitioner's cause of action against respondent officer Beth Stock in her official and individual capacity and her superiors and the City of Doraville, each of whom knew or should have known that respondent officer Stock was unable or unwilling to perform her duties as a police officer. Officer Stock was forced to resign from the Doraville police department six (6) months after the incident at the crux of this civil action due to her continuing acts of misconduct, drug and alcohol abuse and unacceptable performance of her duties. She is no longer employed as a police officer. But at the time of her misconduct that instigated all of these proceedings, the Doraville police department was still trying to cover up for her, and part of that coverup was to attempt to maliciously incriminate the petitioner under color of legal process, resulting in the two false arrests.

In spite of the petitioner's persistent verbal and written demands for speedy trial and his formal motion to dismiss, the DeKalb County District Attorney declined to prosecute or even seek indictment against the petitioner due to "insufficient evidence". The District Attorney closed the case on

January 14, 1998 but left the warrant pending under the unconstitutional[1] prosecutorial device of nolle prosequi with leave, known in Georgia as "NPGJ" (Not Presented to Grand Jury).

The District Attorney argued in a memorandum submitted in response to the petitioner's 1998 motion to dismiss that dismissing the warrant would "subject officers to possible liability for malicious arrest." (Memorandum from Jacqueline Hardy to DeKalb County Superior Court Judge Edward D. Wheeler re: Response to Defendant's Brief in *State of Georgia vs. Christopher Harris*, at 2 ¶ 2 (App. 13).)

The Superior Court concurred with the district attorney and denied the petitioner's motion to dismiss and then denied the petitioner's Motion for Certification in order to stymie any appeal of that decision. The petitioner's appeal, presented eventually in this court as *Harris v. Georgia*, docket no. 99-115, 120 S.Ct. 177, was rejected as interlocutory without certification.

B. History of Proceedings Below

Nevertheless, petitioner filed suit in U.S. District Court against the respondents on May 9, 1998, alleging illegal search and seizure and false arrest in violation of the Fourth Amendment, negligent breach of legal duty and several other related egregious torts, case no. 1:98-CV-1326-JEC.

The district court upheld the respondents' use of the unconstitutional pendency of the undismissed and untried arrest warrant to deny all discovery related to the arrests of the petitioner under the illegitimately asserted doctrine of protection from disclosure due to "ongoing criminal investigation." Then the district court dismissed the case in its entirety on grounds that the petitioner had "failed to carry his burden of demonstrating that the officers violated 'clearly established

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[1] *Klopfer v. North Carolina*, 386 U.S. 213 (1967), which defines nolle prosequi with leave as a "procedural device whereby the accused is discharged from custody but remains subject to prosecution at any time in the future at the discretion of the prosecutor" which is identical to the effect of Georgia's NPGJ prosecutorial case relegation. *See* District Attorney letter to petitioner regarding NPGJ relegation of criminal charges against him at App. 10 and Order of DeKalb County Superior Court at App. 14.

law' by arresting him on these two occasions." May 6, 2000 Order of District Court at 51 (Supp. App. 30.)

The District Court's assertions thereafter that "Indeed, plaintiff's admissions in his deposition clearly demonstrate that the officers had actual probable cause to arrest..." are not based in law because nothing exhibited or declared in connection with the deposition was in violation of law, whether state of federal. Even the court's assertion in the opinion paragraph above that the petitioner "responded 'and now the world will know...'" was fabrication, a deliberate misrepresentation perpetrated by respondent officer Baggett intended to insinuate that the petitioner was in the business of child pornography, denied and ***proven*** false by plaintiff in deposition by reference to the actual recording.

No one reported any crimes by the plaintiff, but nothing more than suspicion and innuendo, propagated in large part by a woman named Sondra London, who was living in Florida at the time of all these events, had never set foot in petitioner's home in Doraville, and couldn't possibly have known what the petitioner did or did not have in his possession since the petitioner was not even on speaking terms with her at the time and had not been since 1995. Ms. London was at the time of the petitioner's arrest engaged to be married to Danny Harold Rolling, the notorious serial killer of five (5) University of Florida students and three (3) Mississipi residents. Rolling currently resides on Florida's death row. Ms. London's whereabouts are unknown to the petitioner at this time.

Incredibly, the district court denied the petitioner's Motion to Compel Sondra London to testify in deposition in this case even though she was living in Atlanta at the time the motion was submitted. Once again, the plaintiff's opportunity for discovery was thwarted by the district court itself, acting to protect the respondents from liability, just as the DeKalb County District Attorney did when he refused to dismiss the arrest warrants because doing so would "subject officers to liability for malicious arrest." (Hardy Memorandum, supra, at 2 ¶ 2. (App. 13.))

The Court of Appeals affirmed the dismissal of the plaintiff's civil action with the mere assertion that "the requested materials related to the pending felony charge of sexual exploitation of children and, therefore, constituted an ongoing criminal investigation." That flies in the face of the rule of stare decisis as evinced by *Capitol Vending Co., Inc., v. Baker et al.*, 35 F.R.D.

510, 511 (District Court D.C.) (1964), holding that there must be some reasonable terminus to any criminal investigation. Once an arrest has been made, it is also a flagrant violation of the Sixth Amendment to the U.S. Constitution. But the district court was unmoved by petitioner's complaint, argument and proof that the state was holding the charge pending for the sole purpose of hindering petitioner's civil action against other state agents.

The district court's apparent prejudice against petitioner was continued by the court of appeals. Even though the Eleventh Circuit has ruled that "the court is to view all evidence and factual inferences in a light most favorable to the nonmoving party", *Samples v. City of Atlanta,* 846 F.2d 1328, 1330 (11th Cir. 1988), the three-judge panel that affirmed the district court stated for the record that in its de novo review of the district court's decision granting summary judgment, it had viewed "the evidence and all reasonable inferences in favor of defendants." *See* Opinion of Court of Appeals at 2, n. 1 (Supp. App. 36).

## REASONS FOR GRANTING THE WRIT

This is a case of great public importance because it involves the deprivation by the state of Georgia of the constitutional rights of citizens to a speedy trial when they may have been arbitrarily and capriciously arrested and therefore never indicted. And it involves the state of Georgia's ongoing and ever worsening deprivation of the rights of all Georgia citizens to their constitutional rights to a speedy trial, or indeed, any trial at all!

The Georgia Indigent Defense Council (GIDC) was established as a state agency by the state legislature to try to ensure that all criminal defendants, especially those who cannot afford to pay for legal counsel, are afforded their constitutional rights. See O.C.G.A. §§ 17-12-32 through 17-12-33. (App. 7).

In its current report for the year 2000, the GIDC writes,

> **"Delay in the formal prosecution of cases is a serious problem. Defendants often sit in jail for months waiting for the prosecution to take their case to the grand jury for indictment. These delays, which are out of the control of the defense, substantially increase expenditures for counties which must continue to pay the costs of housing inmates in county jails long after cases should be ready for disposition through trial or a guilty plea."** Georgia Indigent Defense Council 2000 Report at 6.

http://www.gidc.com

A recent article in the Atlanta Constitution newspaper is even more explicit and morose as to the deplorable conditions in Georgia:

> **"Since he became a public defender in North Georgia last year, Drew Powell has found himself doing things he never dreamed he'd have to do.**
>
> **"Like advising some clients to plead guilty before he's had enough time to adequately assess their cases. Or failing to file a motion to suppress evidence because there are just too many motions to be filed.**
>
> **"'I didn't realize it was going to be as bad as it is,'" says Power, 36, who heads the public defender's office for Habersham, Rabun and Stephens counties....**
>
> **"Critics of Georgia's system say some county programs deny the poor their fundamental rights guaranteed by the U.S. Constitution. These critics note that many indigent defendants languish in jails for months before seeing their lawyer for the first time. Many cases are never investigated. Guilty pleas are often entered by poor defendants after meeting their lawyer for the first time in court and only a brief conversation about the case....**
>
> **"'What we're doing is morally wrong and fundamentally unjust,'said Emmet Bondurant, a prominent Atlanta lawyer....**
>
> **"Judge Ernest H. Woods III, chief judge of the Mountain Judicial Circuit where Powell toils as a public defender, agrees that changes are necessary."** Atlanta Constitution, August 13, 2001, pps. B-1, B-4, under inside headline, "Indigent suspects may wait months for a trial."

Petitioner has been waiting for over five (5) years for either a trial or dismissal!

These tragic and highly inflammatory problems with the judicial and criminal justice system in Georgia are the direct result of Georgia's lack of statutory protection for the speedy trial rights of criminal defendants who have been arrested but never indicted. The only possible protection for such defendants is the Sixth Amendment of the U.S. Constitution and similar

constitutional protections in the Georgia Constitution. But when the lower courts simply ignore the constitution, as they have repeatedly in the instant case, the very foundation of our social contract is defeated! In Georgia's case, a large portion of the population is being criminalized unjustly, and even young children are victimized by the atrocity that is the Georgia criminal justice system.

In the instant case, the state has used the NPGJ device to not only deny the petitioner his right to a speedy trial, but to prevent him from obtaining any discovery whatsoever regarding the false arrests. In Georgia, the deprivation of constitutional rights is commonplace for the very reason that the perpetrators of those deprivations are protected from liability by the various state actors, including the legislature, which has failed in its Constitution mandate to enact laws to protect the constitutional rights of citizens, prosecutors, who deliberately postpone indictments or, as in the instant case and most other cases of false arrest, never even attempt to indict because doing so would invoke defendant's statutory rights to a speedy trial under O.C.G.A. 17-7-170 and even the courts, the last bastion of freedom in America! Witness the instant case as it has wound its way through all possible courts, even to the highest court in the land, with cert denied in 1999, *Harris v. Georgia, supra*! The practioners of such injustice count on the fact that the Supreme Court of the United States can only handle a small percentage of the cases that are brought to it. Yet all the while this systematic injustice in Georgia just gets worse. The blame must ultimately rest with the courts, entrusted by the founding fathers with the safekeeping of our freedoms.

Comes now petitioner to this court once again to beg the learned justices to take advantage of this opportunity and use this case to set a precedent for any and all uses by state prosecutors of the procedural device of "nolle prosequi with leave" even when it is operated under such appellations as "Not Presented to Grand Jury" as in Georgia.

By reference to *Klopfer, supra*, petitioner has shown that this Court has already ruled that a device equivalent to the NPGJ device of Georgia prosecutors is unconstitutional. The decisions of the state courts in the instant case and of the U.S. District Court, which has allowed this injustice to be used to thwart petitioner's constitutional right of access to the federal courts for the remedy of deprivation of constitutional rights, are clearly antithetical to the principles of the United States Constitution and the prior rulings of the highest court in the land.

The deprivation of the constitutional rights of citizens to a speedy trial is an issue of great concern, gravity and importance to the public. Due to such

deprivations, on top of the extreme difficult in prevailing in a civil action against officers and state agencies already rendered virtually immune to any liability by various doctrines of immunity, state law enforcement agents are wont to abuse their police powers at every opportunity.

Even though the Georgia State Legislature has not passed legislation to protect the constitutional rights to a speedy trial of a defendant who has been arrested but never indicted nor formally accused, the fact remains that the right to a speedy trial is a right accorded to every accused citizen under the state and federal constitutions. An arrested person who is not indicted has as much right to a speedy trial as anyone:

> **"*United States v. Marion*, 404 U.S. 307 (1971), held that one's right to a speedy trial attaches when one becomes an accused and identified that point as arrest or when formal charges (indictment or information) are brought, whichever is earlier. This view was recently reaffirmed in *Dillingham v. United States*, 423 U.S. 64 (1975), which reversed the Fifth Circuit Court of Appeals for failure to apply sixth amendment standards to post-arrest, pre-indictment delay in *United States v. Palmer*, 502 F.2d 1233 (1974)." *Haisman v. State*, 242 Ga. 896, 897 (2) (252 S.E.2d 397).**

Georgia prosecutors use the NPGJ disposition of criminal cases that cannot be prosecuted to postpone prosecution indefinitely. The purpose is to circumvent constitutional and statutory protections against false arrest in order to protect the police officers with whom they work from being prosecuted or sued for misconduct and abuse of their police powers.

This fact that Georgia prosecutors are using a prosecutorial device that was ruled unconstitutional in 1967 is demonstrated clearly by the facts of the instant case as well as circumstances revealed by studies of this situation.

## CONCLUSION

The instant case presents questions of exceptional importance affecting the most fundamental rights of citizens in any civilized nation of justice. These are rights that aer so important that they were embodied in the Bill of Rights of the U.S. Constitution. Every accused citizen has a right to a speedy trial by a jury of his peers. This Court ruled in *Klopfer*, *supra*, a landmark decision, that the speedy trial provisions of the Sixth Amendment apply to every citizen in every prosecution brought under state or federal law.

The right to a speedy trial is a right that is also embodied in the Bill of Rights of the Georgia Constitution, at Article 1, Section 1, paragraph XI. (App. 22.)

And any citizen who has reason to believe that he or she has been deprived of their constitutional rights should not have their rights further deprived by sabotage of their right to a fair hearing in a court of law. In the instant case, the district court has ruled, and the Court of appeals has affirmed that the state's deprivation of petitioner's constitutional right to a speedy trial can be used to further deprive petitioner of his right to a fair hearing in a civil action for the deprivation of civil rights by denying petitioner his opportunity for discovery.

Petitioner prays that the Court will use the instant case as an opportunity to review the prosecutorial device of NPGJ in Georgia and other states where it may go by other names. Regardless of the name that is used for it, the effect is the same, to deny justice and promote the tyranny of the state.

As described in petitioners original petition for cert. to this court, "[I]n the instant case, the state wrote that it would not dismiss because it wanted to protect the arresting officers "from possible liability for malicious arrest". (Hardy Memo, App. 13 ¶ 2.)

The facts of this case have consummated that determination, with the able and willing assistance of the district court, which denied to the plaintiff his opportunity for discovery and then dismissed the case for lack of information, and the court of appeals, which affirmed the decision without having conducted a fair appraisal of the facts of the case.

Wherefore, petitioner prays that this court will grant the plaintiff's petition for certiorari so that this matter which is of such grave import to the citizenry of Georgia may be more thoroughly explicated for the consideration of the court.

This the 22nd day of August, 2001.

Respectfully submitted,

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Provisions of the Constitution of the United States

[Amendment IV]
[Security from Unwarrantable Search and Seizure]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

[Amendment V]
[Rights of Accused in Criminal Proceedings]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall he be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

[Amendment VI]
[Right to Speedy Trial, Witnesses, etc.]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

[Amendment XIV]

Section 1.

[Citizenship Rights Not to Be Abridged by States]

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statutory Provisions from Official Code of Georgia Annotated, (O.C.G.A.)

TITLE 16. CRIMES AND OFFENSES -
CHAPTER 12
OFFENSES AGAINST PUBLIC HEALTH AND MORALS
ARTICLE 3. OBSCENITY AND RELATED OFFENSES
PART 2. OFFENSES RELATED TO MINORS GENERALLY

O.C.G.A. § 16-12-100. Sexual exploitation of children; reporting violation; forfeiture; penalties.

(a) As used in this Code section, the term:

(1) "Minor" means any person under the age of 18 years.

(2) "Performance" means any play, dance, or exhibit to be shown to or viewed by an audience.

(3) "Producing" means producing, directing, manufacturing, issuing, or publishing.

(4) "Sexually explicit conduct" means actual or simulated:

(A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(B) Bestiality;

(C) Masturbation;

(D) Lewd exhibition of the genitals or pubic area of any person;

(E) Flagellation or torture by or upon a person who is nude;

(F) Condition of being fettered, bound, or otherwise physically restrained on the part of a person who is nude;

(G) Physical contact in an act of apparent sexual stimulation or gratification with any person's unclothed genitals, pubic area, or buttocks or with a female's nude breasts;

(H) Defecation or urination for the purpose of sexual stimulation of the viewer; or

(I) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure.

(5) "Visual medium" means any film, photograph, negative, slide, magazine, or other visual medium.

(b) (1) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.

(2) It is unlawful for any parent, legal guardian, or person having custody or control of a minor knowingly to permit the minor to engage in or to assist any other person to engage in sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.

(3) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of any performance.

(4) It is unlawful for any parent, legal guardian, or person having custody or control of a minor knowingly to permit the minor to engage in or to assist any other person to engage in sexually explicit conduct for the purpose of any performance.

(5) It is unlawful for any person knowingly to create, reproduce, publish, promote, sell, distribute, give, exhibit, or possess with intent to sell or distribute any visual medium which depicts a minor engaged in any sexually explicit conduct.

(6) It is unlawful for any person knowingly to advertise, sell, purchase, barter, or exchange any medium which provides information as to where any visual medium which depicts a minor engaged in any sexually explicit conduct can be found or purchased.

(7) It is unlawful for any person knowingly to bring or cause to be brought into this state any material which depicts a minor engaged in any sexually explicit conduct.

(8) It is unlawful for any person knowingly to possess or control any material which depicts a minor engaged in any sexually explicit conduct.

(c) A person who, in the course of processing or producing visual or printed matter either privately or commercially, has reasonable cause to believe that the visual or printed matter submitted for processing or producing depicts a minor engaged in sexually explicit conduct shall immediately report such incident, or cause a report to be made, to the Georgia Bureau of Investigation or the law enforcement agency for the county in which such matter is submitted. Any person participating in the making of a report or causing a report to be made pursuant to this subsection or participating in any judicial proceeding or any other proceeding resulting therefrom shall in so doing be immune from any civil or criminal liability that might otherwise be incurred or imposed, providing such participation pursuant to this subsection is made in good faith.

(d) The provisions of subsection (b) of this Code section shall not apply to the activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses or to legitimate medical, scientific, or educational activities.

(e) (1) A person who is convicted of an offense under this Code section shall forfeit to the State of Georgia such interest as the person may have in

(A) Any property constituting or directly derived from gross profits or other proceeds obtained from such offense; and

(B) Any property used, or intended to be used, to commit such offense

(2) In any action under this Code section, the court may enter such restraining orders or take other appropriate action, including acceptance of performance bonds, in connection with any interest that is subject to forfeiture.

(3) The court shall order forfeiture of property referred to in paragraph (1) of this subsection if the trier of fact determines, beyond a reasonable doubt, that such property is subject to forfeiture.

(4) The provisions of subsection (u) of Code Section 16-13-49 shall apply for the disposition of any property forfeited under this subsection. In any disposition of property under this subsection, a convicted person shall not be permitted to acquire property forfeited by such person.

(f) (1) The following property shall be subject to forfeiture to the State of Georgia:

(A) Any material or equipment used, or intended for use, in producing, reproducing, transporting, shipping, or receiving any visual medium in violation of this Code section;

(B) Any visual medium produced, transported, shipped, or received in violation of this Code section, or any material containing such depiction; provided, however, that any such property so forfeited shall be destroyed by the appropriate law enforcement agency after it is no longer needed in any court proceedings; or

(C) Any property constituting or directly derived from gross profits or other proceeds obtained from a violation of this Code section; except that no property of any owner shall be forfeited under this paragraph, to the extent of the interest of such owner, by reason of an act or omission established by such owner to have been committed or omitted without knowledge or consent of such owner.

(2) The procedure for forfeiture and disposition of forfeited property under this subsection shall be as provided for forfeitures under Code Section 16-13-49.

(g) (1) Except as otherwise provided in paragraphs (2) and (3) of this subsection, any person who violates a provision of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five years nor more than 20 years and by a

fine of not more than $100,000.00. In the event, however, that the person so convicted is a member of the immediate family of the victim, no fine shall be imposed.

(2) Any person who violates paragraph (8) of subsection (b) of this Code section shall be guilty of a misdemeanor.

(3) Any person who violates subsection (c) of this Code section shall be guilty of a misdemeanor.

TITLE 17
CRIMINAL PROCEDURE
CHAPTER 7
PRETRIAL PROCEEDINGS
ARTICLE 7
DEMAND FOR TRIAL;
ANNOUNCEMENT OF READINESS FOR TRIAL.

O.C.G.A. 17-7-170. Demand for trial; discharge and acquittal for lack of prosecution.

(a) Any person against whom a true bill of indictment or an accusation is filed with the clerk for an offense not affecting his life may enter a demand for trial at the court term at which the indictment or accusation is filed or at the next succeeding regular court term thereafter; or, by special permission of the court, he may at any subsequent court term thereafter demand a trial. In either case, the demand for trial shall be served on the prosecutor and shall be binding only in the court in which the demand is filed, except where the case is transferred from one court to another without a request from the defendant.

(b) If the person is not tried when the demand is made or at the next succeeding regular court term thereafter, provided at both court terms there were juries impaneled and qualified to try him, he shall be absolutely discharged and acquitted of the offense charged in the indictment or accusation. For purposes of computing the term at which a misdemeanor must be tried under this Code section, there shall be excluded any civil term of court in a county in which civil and criminal terms of court are designated; and for purposes of this Code section it shall be as if such civil term was not held.

# CHAPTER 12
# LEGAL DEFENSE OF INDIGENTS
## ARTICLE 2
## STATE FUNDED LOCAL INDIGENT DEFENSE PROGRAMS

O.C.G.A. § 17-12-32. Georgia Indigent Defense Council - Establishment; composition; qualifications, appointment, and terms of office of members; vacancies; meetings; officers; compensation; legal status; powers.

(a) There is established, as a separate agency within the judicial branch of state government, the Georgia Indigent Defense Council.

...

O.C.G.A. § 17-12-33 Georgia Indigent Defense Council - Purposes and duties.

The Georgia Indigent Defense Council shall have the following purposes and duties:

(1) To administer funds provided by the state and federal governments to support local indigent defense programs provided for in Code Section 17-12-38;

(2) To recommend uniform guidelines consistent with this article within which local indigent defense programs established under this article shall operate;

(3) To provide to local programs and attorneys who represent indigents technical and research assistance, planning assistance, clinical and training programs, and other administrative services to fulfill the purpose of this article; and

(4) To prepare budgets, reports, and management information required for the responsible implementation of this article.

LAW OFFICE
STEVEN H. SADOW, P.C.
800 GRANT BUILDING
44 BROAD STREET, N.W.
ATLANTA, GEORGIA 30303

(404) 577-1400
FAX (404) 577-3600

August 12, 1997

Michelle McBrayer, Investigator
DeKalb County District Attorney's Office
700 N. McDonough Street
Decatur, Georgia 30030

RE: *State v. Christopher T. Harris,*
Warrant Nos. 96W-01014 and 96W-97454

Dear Michelle:

This is to confirm our telephone conversation of several days ago in which you indicated that your investigation of Mr. Harris was still continuing. As you are well aware, Mr. Harris was arrested on 5/9/96 and 6/17/96 on the charges of sexual exploitation of children. Over 14 months has passed since then. I have contacted you on repeated occasions during this time period to check on the progress of the investigation as well as to assert that Mr. Harris wants this matter resolved.

It is our belief that your office has had sufficient time to fully investigate this matter and the defendant's state and federal constitutional rights to a speedy trial have been violated. Accordingly, Mr. Harris hereby asserts in writing his demand for a speedy indictment and trial.

Sincerely,

/s/ Steve Sadow
Steven H. Sadow
Attorney for Defendant

SHS:cmp
cc: J. Tom Morgan, District Attorney

OFFICE OF THE DISTRICT ATTORNEY
STONE MOUNTAIN JUDICIAL CIRCUIT
DEKALB COUNTY COURTHOUSE
DECATUR, GEORGIA 30030

J. TOM MORGAN 404/371-2561
DISTRICT ATTORNEY FAX 404/371-2981

January 9, 1998

Writer's Direct 371-2398

RE: CHRISTOPHER HARRIS
CHARGE: SEXUAL EXPLOITATION OF CHILDREN

TO WHOM IT MAY CONCERN:

CHARGES IN THE ABOVE-REFERENCED CASE WILL NOT BE PRESENTED TO THE GRAND JURY DUE TO INSUFFICIENT EVIDENCE TO ESTABLISH THE ELEMENTS OF THE ABOVE OFFENSE. PROPERTY WHICH WOULD NOT HAVE BEEN USED IN A TRIAL OF THE ABOVE CASE WHICH IS RETAINED BY THE DEKALB DISTRICT ATTORNEY'S OFFICE OR DORAVILLE POLICE DEPARTMENT MAY BE RELEASED TO CHRISTOPHER HARRIS

SINCERELY,

/s/ Jacqueline S. Hardy
JACQUELINE S. HARDY
ASSISTANT DISTRICT ATTORNEY

OFFICE OF THE DISTRICT ATTORNEY
STONE MOUNTAIN JUDICIAL CIRCUIT
DeKalb County Courthouse
556 North McDonough Street
Decatur, Georgia 30030
Telephone (404) 371-2561 Facsimile (404) 371-2981

J. TOM MORGAN
District Attorney

RECORDS DIVISION
(404) 371-2575

1-14-98

Christopher T. Harris
3321 Wheeler Dr
Doraville GA 30340

STATE OF GEORGIA vs.: Christopher Thad Harris
CHARGE(S): Sexual Exploit of children
DATE OF ARREST: 06-20-96
DATE CLOSED: 01-08-98

You are advised that the above-styled felony criminal matter will not be presented to the DeKalb County Grand Jury at this time. The case will remain closed unless other evidence is forthcoming or further evaluation of the charges becomes necessary. You will be notified if the case is re-opened. The official disposition of these charges at this time is "Not Presented to Grand Jury", also referred to in criminal history as "NPGJ". If you were fingerprinted at the time you were booked into the DeKalb County Jail, this disposition will be sent to the Georgia Crime Information Center for entry on your criminal history record as required by Georgia law. The arrest for these charges will remain a permanent part of your criminal history. It is important to recognize that an arrest is not the same thing as a conviction.

If you were booked at the DeKalb County Jail and bonded out without using the services of a bonding company, the person who posted your bond may be entitled to a Release of the bond lien or property or refund of the cash. The person whose name is on the cash or property bond receipt issued at the Jail must personally bring the receipt and photo identification to the District Attorney's Records Division, Seventh Floor, DeKalb County Courthouse,

between the hours of 9:00 A.M. and 4:30 P.M. to obtain a written Release.

RECORDS DIVISION

/s/ Carole R. Louviere
Supervisor

Technicians initials: /s/ CMScott
Date Mailed: 01-14-98

MEMORANDUM

TO: JUDGE WHEELER, SENIOR JUDGE

FROM: JACQUELINE HARDY, ADA /s/ jsh

DATE: MARCH 13, 1998

RE: RESPONSE TO DEFENDANT'S BRIEF
STATE OF GEORGIA VS. CHRISTOPHER HARRIS

CC: MIKE KATZ, ATTORNEY FOR DEFENDANT

---

Two warrants are at issue in the above-referenced case. Warrant No. 96W97454 was issued on May 9, 1996 for the misdemeanor offense of Sexually Explicit Conduct by a Minor for Use in a Visual Medium involving a number of photographs of a female child posing in a sexually arousing manner. For whatever reason, this warrant was not subjected to a probable cause determination. Warrant No. 96W01014 was issued on June 17, 1996 for the felony offense of Sexual Exploitation of Children involving a videotape of a female child dancing and exposing her breasts. This warrant was bound over to DeKalb Superior Court after a determination of probable cause was made by Judge Elliott Shoenthal, Magistrate, on July 15, 1996. Defendant is requesting that both of these warrants be dismissed.

While the State concedes that Warrant No, 96W97454 should be dismissed since there was no probable cause determination and the State is not proceeding with indictment on that charge, we disagree that the second warrant, Warrant No. 96W01014, should be dismissed. Once a probable cause determination is made, there should be no need to dismiss a warrant if the State decides not to pursue the case. In the cases cited by Defendant, there is no indication that a probable cause determination had ever been made and therefore a dismissal of those warrants was appropriate.

In order to determine probable cause, a judge must find whether it is more probable than not that the defendant committed the acts charged. In

this case, on July 15, 1996, when Judge Shoenthal heard the facts of the case, he made that determination based on the facts before him at the time of the hearing and he bound the case over to Superior Court. A probable cause standard is not the applicable standard used by the District Attorney's Office in deciding whether or not to prosecute. Prior to such a decision being made in the District Attorney's Office, a lengthy investigation is conducted which often reveals facts which were not known to the Magistrate or the investigating officer. The fact that the District Attorney's Office decides not to prosecute based on information gained through an investigation should not negate the prior determination of probable cause.

Dismissing the warrant would not only negate Judge Shoenthal's previous order, which was valid at the time made, but it would subject officers to possible liability for malicious arrest and would create an undue hardship on the District Attorney's Office. If a Defendant is entitled to have a warrant dismissed any time the prosecuting authority decides not to prosecute, courts would be flooded with such requests. Any time a case is dismissed by way of not presenting the case to the grand jury or a nolle prosequi, a defendant would then be entitled to have such warrants be dismissed. Clearly that is not the intention of the appellate courts in affirming the dismissal of the warrants in the cases cited by Defendant.

Defendant claims he suffers restraints on his liberty. However, all conditions of bond are removed any time the prosecuting authority declines to prosecute. Any stigma he suffers from the arrest cannot be removed by the dismissal of these warrants because the arrest will always appear on Defendant's record.

Based on the foregoing reasons, the State respectfully requests the Court deny Defendant's request to dismiss Warrant No. 96W01014.

IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

| | | |
|---|---|---|
| STATE OF GEORGIA | ) | |
| Plaintiff | ) | |
| vs. | ) | WARRANT NOS. 96W97454<br>96W01014 |
| CHRISTOPHER HARRIS, | ) | |
| Defendant | ) | |

ORDER ON MOTION TO DISMISS WARRANTS
(Filed April 29, 1998)

The Defendant, through an attorney at law, filed a motion to dismiss these warrants. The Court held a hearing in which arguments were made. Subsequent thereto, additional briefs have been filed. The defendant is now Pro Se.

The State concedes that warrant number 96W97454 should be dismissed because there was never a judicial determination of probable cause. Therefore, warrant number 96W97454 is hereby DISMISSED.

The State objects to the dismissal of warrant number 96W01014. At a magistrate court hearing on July 15, 1996, the charge set forth in this warrant was bound over to DeKalb Superior Court, and the defendant posted bond. The District Attorney decided on January 8, 1998 that the charge in this warrant would not be presented to the Grand Jury. On the same date the defendant was notified that the case was closed and would "remain closed unless other evidence is forthcoming or further evaluation of the charges becomes necessary."

In the case of McCord v. Jones, 168 Ga. App. 891 (1983), a warrant was issued and "the district attorney decided not to seek an indictment and requested that the Clerk of the Superior Court place the warrant on the 'dead

docket' on the basis that there was insufficient evidence on which to prosecute the motion." The case does not state if a probable cause hearing had been held. In the case before the Court, the district attorney "closed" the case, instead of asking the clerk to place the case on the dead docket.

After discussing the effect of placing an indicted case on the dead docket the court in McCord v. Jones states: "In this case, notwithstanding the possible inappropriateness of placing a warrant (rather than an actual indictment) on the dead docket, we find a similar case [sic] of finality on termination of the prior criminal proceeding. Certainly, nothing prevents the district attorney from subsequently seeking an indictment and proceeding with a prosecution; likewise, nothing prevents the appellant from formally moving for dismissal of the charges. The present disposition simply does not constitute an abandonment and/or termination of the proceeding, absent a subsequent formal entry of dismissal of the criminal charges."

The district attorney still has the right to present the charge to the Grand Jury if additional evidence is uncovered or further evaluation warrants.

The motion to dismiss warrant number 96W01014 is hereby DENIED.

This the 28th day of April, 1998

/s/ Edward D. Wheeler
EDWARD D. WHEELER
Senior Judge

Copies to:

Jacqueline Hardy
Assistant District Attorney

Christopher T. Harris